



STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

Date Amended:	03/22/01	Bill No:	AB 249
Tax:	Sales and Use	Author:	Matthews, et al.
Board Position:		Related Bills:	

BILL SUMMARY

This bill would expand the Board's regulation relating to the exemption for sales and purchases of lancets and blood glucose test strips, by eliminating the requirement that these items be furnished by a registered pharmacist.

ANALYSIS

Current Law

Under existing law, except where specifically exempted by statute, sales or use tax is imposed on all retailers for the privilege of selling tangible personal property at retail in this state. Section 6369 of the Sales and Use Tax Law provides that sales of medicine, when prescribed and sold or furnished under certain conditions for the treatment of a human being, are exempt from sales and use tax. Although an item, device, or apparatus may be prescribed by a physician for the treatment of a patient, for the sale to be exempt from tax, the item must qualify as a "medicine" under Section 6369.

Under this section, certain named devices, instruments, apparatus, devices, and physical equipment are included within the term "medicine" and therefore qualify for the exemption from tax. For example, the sale or use of insulin and insulin syringes furnished by a registered pharmacist for treatment of diabetes are specifically included within the term "medicine" and therefore currently qualify for an exemption from tax.

The Board's Regulation 1591.1, *Specific Medical Devices, Appliances, and Related Supplies*, interprets and makes specific the provisions of Section 6369. Under the regulation, sales and purchases of glucose test strips and skin puncture lancets furnished by a registered pharmacist that are used by a diabetic patient to determine his or her own blood sugar level and the necessity for and amount of insulin and/or other diabetic control medication needed to treat the disease in accordance with a physician's instructions are considered an integral and necessary active part of the use of insulin and insulin syringes and, accordingly, are not subject to sales or use tax. Sales and purchases of these items over-the-counter without being furnished by a registered pharmacist, however, remain subject to tax.

Proposed Law

This bill would amend Section 6369 of the Sales and Use Tax Law to include within the term "medicines," blood glucose strips and lancets, whether or not furnished by a registered pharmacist, to a person for the treatment of diabetes as directed by a physician.

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the Board's formal position

The provisions of the bill would become operative on the first day of the first calendar quarter commencing more than 90 days of date the bill becomes enacted.

Background

Last year, during the 2000 Legislative Session, AB 2587 (Cardenas, et al.) was considered by the Legislature to 1) provide a sales and use tax exemption for the sale and purchase of blood glucose monitors whether or not the devices are furnished by a registered pharmacist, 2) codify the Board's regulation relating to the exemption for sales and purchases of lancets and blood glucose test strips, and 3) expand the regulation by eliminating the requirement that these items be furnished by a registered pharmacist in order for the exemption to apply. That measure, which the Board voted to support, was held in the Assembly Appropriations Committee.

COMMENTS

1. **Sponsor and purpose.** According to the author's office, the sponsor of this measure is the California Pharmacists Association. Its purpose is to codify the Board's regulation concerning the application of sales and use tax to sales and purchases of blood glucose test strips and lancets furnished for the treatment of diabetes, and to delete the requirement that these items be furnished by a registered pharmacist.
2. **The March 22, 2001 amendments delete the requirement that the items be furnished by a registered pharmacist in order for the sale or purchase to be exempt from tax.** In the previous version of this measure, in order to be exempt from tax, a registered pharmacist would have been required to furnish the test strips and lancets. Since these items can be purchased over-the-counter, some purchasers may not have received the benefit of the exemption. These amendments address this issue.
3. **This bill would not materially affect the Board's administration of the Sales and Use Tax Law.** Since this bill would codify the Board's interpretation of the law, it would not materially affect the Board's workload.

COST ESTIMATE

Enactment of this bill would not materially affect the Board's administrative costs.

REVENUE ESTIMATE

Enactment of this measure would enable diabetics to purchase the blood testing devices over-the-counter, rather than through the pharmacist, and retain the sales and use tax exemption. Deleting the requirement that a registered pharmacist furnish these items in order for the exemption to apply would therefore not affect state or local revenues.

Analysis prepared by:	Sheila T. Sarem	445-6579	04/02/01
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Contact:	Margaret S. Shedd	322-2376
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